

Justice Department statement on leak prosecutions:

- The Justice Department has brought criminal charges against five individuals in connection with alleged leaks of classified information to reporters in recent years. The Defense Department is prosecuting Bradley Manning in connection with the alleged disclosure of classified information to Wikileaks.
- As the criminal complaint against John Kiriakou makes clear, the charges against him did not arise from any purported whistle-blowing by Kiriakou or from any public statements Kiriakou may have made about whether waterboarding was right or wrong. Rather, they stem from his alleged disclosure to reporters of CIA officers' identities, including a covert CIA officer, and their involvement in classified operations. In various emails referenced in the criminal complaint, Kiriakou himself allegedly stated that the publication of one particular CIA officer's name (Officer B) in the media was "despicable and unnecessary;" could endanger that officer; and noted that this officer did not engage in waterboarding.
- In addition, this case did not begin as an investigation into Kiriakou. As alleged in the complaint, it started as an investigation into the facts and circumstances surrounding the information on covert government personnel contained in a January 2009 defense filing at Guantanamo Bay and the photos of CIA and FBI officials that were discovered among high-value detainees at Guantanamo Bay. In the wake of these events, investigators simply followed the evidence where it led. It is important to note that, upon joining the CIA in 1990 and on multiple occasions in the following years, Kiriakou signed agreements requiring him not to disclose classified information to unauthorized individuals. And, as a general matter, an individual in authorized possession of classified information has no authority or right to unilaterally determine that classified information should be made public or disclosed to those not entitled to it. The leaker is not the owner of such information and only the owner can declassify such information.
- The Justice Department does not target whistleblowers. Should any federal employee wish to blow the whistle or report government wrongdoing, there are well-established mechanisms for doing so with the Offices of Inspector General of their respective agencies. With regard to classified information, there is a particular statute providing lawful mechanisms for reporting such matters. We always encourage federal employees to do so. However, we cannot sanction or

condone federal employees who knowingly and willfully disclose classified information to the media or others not entitled to receive such information.

- The Justice Department has always taken seriously cases in which government employees and contractors entrusted with classified information are suspected of willfully disclosing such classified information to those not entitled to it. As a general matter, prosecutions of those who leaked classified information to reporters have been rare, due, in part, to the inherent challenges involved in identifying the person responsible for the illegal disclosure and in compiling the evidence necessary to prove it beyond a reasonable doubt in a court of law. Prosecutorial decisions are always based on the facts, the evidence and the law. The Department has been working with the intelligence community not only to expedite but also to improve the handling of such cases. The Justice Department has also been working with these agencies to ensure that the intelligence community and other agencies have remedies of their own to address employees suspected of leaking classified information in those instances where criminal prosecution is not feasible.
- As a general matter and as provided by the law, federal regulations and Justice Department guidelines, whenever the Justice Department conducts an investigation of this sort, we seek to strike the proper balance between First Amendment freedoms and the law enforcement and national security interest in investigating unauthorized disclosures of classified information. In recognition of the importance of freedom of the press to a free and democratic society, it is the Justice Department's policy that the prosecutorial power of the government should not be used in such a way that it impairs a reporter's responsibility to cover as broadly as possible controversial public issues.
- We have no comment for you on the number or percentage of these investigations where the evidence was insufficient to support criminal charges against an individual. Generally, criminal prosecutions for unauthorized disclosure of classified information are the purview of the Justice Department's National Security Division (NSD), however, some of these cases were initiated by the Criminal Division prior to the 2006 creation of the NSD. The Kiriakou prosecution, however, is being handled by Special Attorney Patrick Fitzgerald for reasons explained in the Kiriakou criminal complaint.